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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,852	12/06/2001	Timothy S. Sherwood	033018-031	7465

7590 02/24/2003

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EXAMINER

PAIK, SANG YEOP

ART UNIT	PAPER NUMBER
3742	

DATE MAILED: 02/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/003,852	SHERWOOD ET AL.
	Examiner Sang Y Paik	Art Unit 3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_ .

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_ is/are allowed.

6) Claim(s) 1,5-7,9 and 17-20 is/are rejected.

7) Claim(s) 2-4,8 and 10-16 is/are objected to.

8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 14 January 2002 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_ .
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5 .

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 3/15/02 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Especially the foreign documents and other non-patent literatures have not been considered.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "10" and "30" have both been used to designate the aerosol generator. Furthermore, "16" and "34" have been both used to designate the passage; "24" and "36" have been both used to designate the heater. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The disclosure is objected to because of the following informalities: throughout the specification, different reference numerals were used to designate the same parts. For instance, the reference numerals "10" and "30" were used for the aerosol generator, "24" and "36" for the heater, "16" and "34" for the passage. These numerals were used to describe the same parts as shown in Figure 1 and 2, where the Figure 2 is the cross sectional view of Figure 1.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 5-7, 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Takeuchi (US 6,155,268).

Takeuchi anticipates the aerosol generator claimed including the laminate body having the fluid passage, the electric resistance heater plates along the fluid passage, a fluid supply, the laminated layers being bonded and sealed with the material such as a plastic film or a metal, the capillary size having the width of 0.01 mm to 2.0 mm (also see Figures 10 and 11; and column 9, line 35- column 10, line 27).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takeuchi (US6,155,268) in view of Howell et al (US 5,743,251).

Takeuchi discloses the aerosol generator claimed except the heater comprising a layer of platinum.

Howell et al shows an aerosol generator having a layer of platinum as the heater, and it teaches that the platinum layer does not experience oxidation degradation or other corrosion. In view of Howell et al, it would have been obvious to one of ordinary skill in the art to adapt Takeuchi et al with a heater layer made of platinum since platinum provides good resistance to oxidation degradation and corrosion to improve the life of the aerosol generator.

*Allowable Subject Matter*

8. Claims 2-4, 8 and 10-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y Paik whose telephone number is 703-308-1147. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on 703-308-1327. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

Sang Y Paik  
Primary Examiner  
Art Unit 3742

S.Y.P.

syp  
February 13, 2003